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THE PASCHOS LAW UPDATE NEWSLETTER

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I. GENERAL LITIGATION

The Economic Loss Doctrine Only Bars Negligence-Based Claims Therefore Doctrine Does Not Bar UTPCPL Statutory Claims That Do Not Sound in Negligence

In *Knight v. Springfield Hynudai*, 2013 PA Super 309; 2013 Pa. Super. LEXIS 3185 (December 2, 2013) plaintiff Beverly Knight purchased a used car from defendant. At the time of the purchase, plaintiff signed two documents: a Buyer's Order, which included the terms of the purchase, and a Retail Installment Sales Contract (RISC), which detailed her financing agreement. The Buyer's Order contained an arbitration clause, but the RISC did not. The RISC did, however, contain an integration clause, which stated: "This Contract contains the entire agreement between you and us relating to this contract."

Following her purchase, Knight learned that the car had previously been part of a rental fleet, it had multiple prior owners, the mileage of the car as reported to her was inaccurate, and it had previously been in an accident and sustained damage. As a result, Plaintiff sued the dealer and financing company alleging, among other things, that defendants violated the Unfair Trade Practices and Consumer Protection Law ("UTPCPL") which prohibits sellers from engaging in unfair or deceptive acts or practices, by misrepresenting characteristics of the vehicle. The defendants moved to compel arbitration based upon an arbitration clause contained in the Buyers Order and a motion to dismiss plaintiff's UTPCPL claim based on the fact that it was barred by the economic loss doctrine. The Court granted the Motion to Compel arbitration and dismissed the UTPCPL claim.

Plaintiff proceeded to arbitration, at the conclusion of which the arbitrator awarded her \$971.41, plus costs and fees. Knight filed a motion in the trial court to vacate the arbitration award, which the trial court denied.

On appeal, the Superior Court reversed the Court of Common Pleas and found that the arbitration clause in the Buyers Order was not binding since the parties entered into the RISC which contained an integration clause and the RISC did not contain an arbitration clause. As such, the court found that the lower court committed error in compelling arbitration.

The Superior Court also held that the economic loss doctrine, which prohibits plaintiffs from recovering in tort for purely economic damages, does not prohibit plaintiff from pursuing her UTPCPL claim. The court relied on the definition of the economic loss doctrine provided in *Excavation Technologies, Inc. v. Columbia Gas Co. of Pennsylvania*, 604 Pa. 50, 53, 985 A.2d 840, 841 (2009). There the Supreme Court defined the doctrine as providing "no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage." The court noted that the claims at issue in this case are statutory claims brought pursuant to the UTPCPL, and do not sound in negligence. Therefore, the economic loss doctrine is inapplicable and does not operate as a bar to Knight's UTPCPL claims.

II. INSURANCE LAW

"Faulty Workmanship" Cases Do Not Apply to Claims Alleging That an Off-The-

Shelf Product Failed in Service Causing Damage to Other Property and/or Personal Injury.

In *Indalex, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 2013 PA Super 311, 2013 Pa. Super. LEXIS 3186 (December 3, 2013), Indalex Inc. sought coverage for liabilities related to allegedly defective “BetterBilt” windows and doors. In five out-of-state lawsuits, contractors and homeowners alleged that BetterBilt windows and doors leaked, resulting in physical damage to surrounding structures, like mold, mildew, and cracked walls, and in personal injuries. The out-of-state claims against Appellants were based on strict liability, negligence, breach of warranty and breach of contract.

Indalex was insured under policies of general liability insurance that afforded coverage for, among other things, lawsuits seeking damages because of “bodily injury” or “property damage.” Indalex requested that its primary carrier provide a defense and indemnification of the underlying defect lawsuits. The primary carrier complied. When the primary policy’s limits were exhausted, Indalex tendered the lawsuits to its umbrella carrier, National Union Fire Insurance Company (“National Union”), but National Union denied coverage, asserting that the underlying lawsuits do not allege an “occurrence” and, therefore, the lawsuits did not trigger coverage.

The trial court concluded that *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888 (Pa. 2006) (Pennsylvania’s leading “faulty workmanship” case), barred coverage. In *Kvaerner*, the Supreme Court held that coverage does not extend under contracts for general liability insurance to claims alleging “property damage” arising solely out of faulty workmanship. The Court in *Kvaerner* explained that to hold otherwise would effectively transform the insurance policy into a performance bond, since it would operate to guarantee the product and workmanship of the insured. Based on *Kvaerner*, the court granted summary judgment finding that the underlying lawsuits did not allege an “occurrence” and that National Union was not required to defend or indemnify Indalex.

On appeal, the Indalex raised, among other things, the issue of whether the trial court erred in characterizing the underlying lawsuits as involving solely “faulty workmanship.” The Superior Court found that the Indalex case was different, and the physical damage allegedly caused by Indalex’s windows and doors did constitute an “occurrence.” The court noted that the alleged physical damage was not confined to the products themselves, but affected walls and other areas into which the product was installed. Furthermore, Indalex did not foresee the “property damage” or “bodily injury” that resulted from its allegedly defective products. This was significant because the policy’s definition of “occurrence” required that Indalex neither expect nor intend the resulting injuries (a requirement that did not exist in the policy at issue in *Kvaerner*.) As such, the court found that *Kvaerner* did not apply. Specifically, the Superior Court of Pennsylvania held that *Kvaerner* and its progeny do not apply to claims alleging that an off-the-shelf product failed in service causing damage to other property and/or personal injury.

III. ADMINISTRATIVE LAW

Court Held it is Without Jurisdiction to Adjudicate Claims Sounding in Contract and Tort that are Essentially a Collateral Challenge to a State Administrative Determination

In *Beaver v. Magellan Health Servs.*, 2013 N.J. Super. LEXIS 175 (December 11, 2013), Plaintiff Irvin Beaver, a former public employee, received health insurance coverage for himself and his family through the NJ Plus and, later, the NJ Direct health benefits programs, which were administered by Horizon Blue Cross/Blue Shield of New Jersey on behalf of the State Health Benefits Program. That program, and its governing body, the State Health Benefits Commission (SHBC), were pursuant to the New Jersey Health Benefits Program Act.

Horizon hired Magellan Health Services Inc. and Magellan Behavioral Inc. to manage

mental health and substance abuse benefits for eligible NJ Plus members. Although the state contracts with health insurers to administer various benefit plans, the SHBC alone has the authority and responsibility to make payments on claims, to limit or exclude benefits, and to make final adjudications regarding disputes between plan members and administrators.

On February 10, 2008, plaintiff's son, a minor, was admitted for inpatient, residential care at the Caron Foundation, a residential treatment facility for substance abuse. Initially, Caron prescribed thirty-one days of inpatient care, but later revised its recommendation to include an additional ninety days of inpatient, residential treatment.

Plaintiff submitted a claim for coverage and on February 26, 2008, Magellan advised that it would not authorize residential substance abuse treatment "as of" February 25, because plaintiff's son "no longer shows evidence" that he needs residential treatment. Plaintiff challenged the denial and Magellan undertook a "Level 1 appeal review." On February 28, Magellan advised that its prior denial was proper, and cited a telephone conversation between one of the son's doctors at Caron and its own physician advisor in which the son's doctor allegedly agreed that outpatient care was the appropriate level of treatment.

After learning that Magellan's adviser had, in fact, not spoken to the identified Caron physician but to another of the son's doctors, who alleged he never stated that only outpatient treatment was required, plaintiff sought further review. Horizon's Member Appeals Subcommittee then overturned the denial of coverage for Feb. 26 to March 4, but denied coverage thereafter.

Plaintiff next appealed to the SHBC, which upheld the denial of benefits after March 4, 2008. Plaintiff pursued a further appeal and the matter was transferred to the Office of Administrative Law. After an evidentiary hearing, the administrative law judge recommended denial of the appeal. The SHBC adopted the ALJ's findings and conclusions. Plaintiff filed a notice of appeal from the SHBC's final decision, but later voluntarily withdrew his appeal.

Plaintiff filed a complaint in the Law Division seeking "relief for [d]efendants' denial of substance abuse treatment as a violation of plaintiff's health plan" and named only Horizon and Magellan as defendants. The complaint provided the history of plaintiff's efforts to secure coverage for his son's inpatient, residential substance abuse treatment and alleged: (1) breach of contract; (2) breach of fiduciary duty; (3) violation of the New Jersey Consumer Fraud Act; and (4) unjust enrichment.

Defendants moved to dismiss plaintiff's complaint under Rule 4:6-2(a) (lack of jurisdiction) and Rule 4:6-2(e) (failure to state a claim). In a lengthy opinion, the motion judge considered the history of plaintiff's claim as recited in the pleadings, and held that "plaintiff should have instituted this action in the Appellate Division" and that a transfer of the matter to the Appellate Division under Rule 1:13-4(a) at that point was time-barred. The motion judge then entered an order of dismissal.

On appeal, Plaintiff argued that his complaint did not constitute "one of the 'rare instances' in which a complaint should be dismissed as a matter of law, prior to the exchange of any discovery." Further, he asserted that his complaint did not challenge the SHBC's final administrative action, but rather was a separate action at law alleging statutory and common law causes of action against Magellan and Horizon.

The Court found that the real issue to be decided was under what circumstances a litigant may pursue common law and statutory causes of action in the Law Division, rather than appeal from State final agency determination, where the merits of the agency determination are at issue.

The court noted that it has consistently recognized the statutory and regulatory scheme that requires disputes over eligibility and benefits to be submitted first to the SHBC, and,

only thereafter, to this court for resolution.

Plaintiff argued he is not challenging the SHBC determination in his present complaint, but rather is asserting contract and tort claims against the Program administrators. Plaintiff essentially argued that the SHBC final agency action is irrelevant to his asserted causes of action. Defendants argued that the language in plaintiff's complaint showed that, irrespective of the causes of action asserted, plaintiff is simply seeking coverage for his son's inpatient substance abuse treatment, and that a reversal of the SHBC determination is essential to plaintiff's complaint.

The court evaluated plaintiff's claims and noted that plaintiff has explicitly stated that his complaint is brought to recover "unpaid benefits" under the Program. Accordingly, to recover, plaintiff must obtain a reversal of the SHBC final agency action upholding the denial of those same benefits. The court found that Plaintiff could not avoid this obvious conclusion by cloaking his claims as contract and tort. Accordingly, the court held that plaintiff's complaint in the Law Division must be dismissed for lack of jurisdiction. The court provided that to hold otherwise would permit plaintiff to collaterally attack a State administrative determination in the Law Division and the court is without jurisdiction to adjudicate such claims

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